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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

OSCAR SOTELO,

Defendant and Appellant.

G045281

(Super. Ct. No. 08NF1413)

O P I N I O N

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS ANGEL TURCIOS,

Defendant and Appellant.

G045427

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS ALVAREZ,

Defendant and Appellant.

G045539

Appeals from judgments of the Superior Court of Orange County,
Gary S. Paer, Judge. Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant
and Appellant Oscar Sotelo.

John F. Schuck, under appointment by the Court of Appeal, for Defendant
and Appellant Luis Angel Turcios.

Marilee Marshall, under appointment by the Court of Appeal, for
Defendant and Appellant Jesus Alvarez.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Lilia E. Garcia and Peter
Quon, Jr., Deputy Attorneys General, for Plaintiff and Respondent.

* * *

INTRODUCTION

A jury convicted Oscar Sotelo, Luis Angel Turcios, and Jesus Alvarez each
of one count of attempted voluntary manslaughter (Pen. Code, §§ 664, subd. (a), 192,
subd. (a))¹ (as a lesser included offense of the charged crime of attempted murder), one
count of active participation in a criminal street gang (§ 186.22, subd. (a)), one count of
assault with force likely to result in great bodily injury (§ 245, subd. (a)(1)), and one
count of vandalism causing damage in an amount more than \$400 (§ 594, subs. (a),
(b)(1)). The jury also found Sotelo and Turcios guilty of one count each of making
criminal threats (§ 422). The jury found true the allegations that Sotelo, Turcios, and
Alvarez committed the crimes of which they were convicted (other than active
participation in a criminal street gang) for the benefit of or in association with a criminal
street gang (§ 186.22, subd. (b)(1) (section 186.22(b)(1).)

¹ Further code citations are to the Penal Code unless otherwise noted.

The trial court sentenced Sotelo to an aggregate prison term of seven years two months, sentenced Turcios to an aggregate prison term of 14 years four months, and sentenced Alvarez to an aggregate prison term of eight years eight months.² Sotelo, Turcios, and Alvarez separately appealed from the judgment, and we ordered the three appeals (Nos. G045281, G045427, and G045539) to be consolidated. We affirm.

Sotelo, Turcios, and Alvarez challenge the jury verdicts and judgments on the same two grounds. First, they argue substantial evidence did not support the convictions for attempted voluntary manslaughter because, they contend, the gun with which Sotelo tried to shoot the victim was inoperable and they all knew so. We disagree. The prosecution's gun expert testified the gun was unreliable, not inoperable, and would always shoot in single action or in double action if the trigger were pulled slowly. The jury could, and apparently did, believe the expert and reject Sotelo's testimony the gun could not fire.

Second, Sotelo, Turcios, and Alvarez argue substantial evidence did not support the true finding on the gang enhancement allegations under section 186.22(b)(1), because the prosecution's gang expert was not presented with a hypothetical based on the facts of the case and asked whether the crimes were committed for the benefit of or in association with a criminal street gang. We again disagree. Although an expert opinion on that question might have assisted the trier of fact, expert opinion testimony was not required to uphold the true findings on the gang enhancement allegations. The jury could consider and weigh the evidence at trial, including the expert's testimony, and, based on its common experience, conclude the crimes committed by Sotelo, Turcios, and Alvarez were gang related.

² In bifurcated proceedings, the trial court found true the prior conviction allegations against Turcios and a prior conviction allegation against Alvarez.

FACTS

We view the evidence in the light most favorable to the verdict and resolve all conflicts in its favor. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Barnes* (1986) 42 Cal.3d 284, 303.)

I.

The Crimes

On April 25, 2008, around 4:00 p.m., Aleksandr Korniyenko was attending a meeting at Ames Plumbing, for which he worked as an “HVC” system specialist. Korniyenko, who was 55 years old at the time of trial, lived with his wife and three children just 350 yards away in an apartment on Camino Del Sol, in Anaheim. After the meeting, Korniyenko, who had his four-year-old and six-year-old children with him, walked back to his company-owned truck.

As he approached the truck, Korniyenko saw a young man (later identified as Alvarez) sitting on the back step of the truck and drinking a beer. Korniyenko asked Alvarez to drink his beer elsewhere because Korniyenko needed to drive away. Alvarez said something under his breath, got up, and walked off.

After seating his two children in the cab of the truck, Korniyenko heard something behind him and, turning around abruptly, saw Alvarez and two other young men. Two of the three were waving their arms “[l]ike just before a fight” while the third had his hands in the pockets of his jacket. Korniyenko said, “it’s cool, guys,” then got into the truck and drove home.

Once home, Korniyenko changed out of his work clothes while his children played in the yard. His son ran inside the apartment and announced that someone was painting the truck. Korniyenko stepped outside and saw Alvarez standing on the front bumper of the truck and painting graffiti on the front windshield. Korniyenko approached Alvarez and asked him, “why do you paint on my truck?” Alvarez jumped off the truck, said something to someone, turned toward Korniyenko, and said, “it’s none

of your business.” Sotelo, Turcios, and Hassell Abraham Caceres emerged from behind the truck and, with Alvarez, approached Korniyenko. He told them, “guys, calm down” and “you don’t need to put any more graffiti on my truck.” Two or three of the four replied, “we will do what we please.”

All four continued toward Korniyenko and tried to surround him. Sotelo held a large beer bottle, Alvarez carried a large object that looked like a baseball bat, Turcios had a paint can, and Caceres had his hands in his pockets. They spoke slang in a harsh tone of voice. When Alvarez said, “come on,” all four, yelling “hit him, hit him,” attacked Korniyenko from different sides. Sotelo tried to hit Korniyenko with the beer bottle, but he managed to dodge it; Caceres tried to kick Korniyenko but “had difficulty doing it”; Turcios struck Korniyenko in the forehead with the paint can, causing his eyeglasses to fall to the ground; and Alvarez struck Korniyenko beneath his knees.

Once Korniyenko was struck below the knees, and although his eyeglasses had been smashed, he realized it was time “to do some self-defense.” Korniyenko had served for 21 years in the Russian army, where he had been trained in self-defense and had attained the rank of lieutenant colonel. He decided that to defend himself effectively, he needed to take two of the four assailants out of the fight. He dropped to the ground, rolled backwards on the grass, kicked off his flip-flops, popped up, and, with a closed fist, punched Alvarez in the nose and struck Turcios. As blood dripped from his nose, Alvarez exited the fight, as did Turcios.

Korniyenko turned around and saw Sotelo, who was four to five feet away, point a silver-colored revolver at his chest. Korniyenko told his family and other persons who had gathered to run into their homes. While Caceres smiled “from ear to ear,” Sotelo pulled the trigger. The gun did not release. Alvarez, Turcios, and Caceres gathered around Sotelo and started to shout, “shoot him, shoot him.”

Korniyenko moved from left to right so he would not be a target and to give the people behind him a chance to get out of the area. He heard Sotelo pull the trigger

again, but again the gun did not fire. Turcios yelled, “do it one more time.” At that moment, Korniyenko realized “three times is too much to press one’s luck,” and, seeing no one behind him, ran to his house. As he ran—in a zigzag pattern to make himself harder to hit—Korniyenko heard a click from the trigger being pulled a third time.

Once inside his home, Korniyenko closed the metal security door and locked a second door. He soon heard banging that sounded like a heavy object was hitting against the security door. The banging, which lasted for one and a half to two minutes, broke the security door, and about 45 seconds after the banging started, a window broke. (Sotelo testified he broke the window by throwing a beer bottle at it.) As the banging continued, Korniyenko told his wife and children to go into the kitchen to hide. He heard his wife, who was “close to hysterical,” call the police and tell them, “[w]e are being killed.” The police arrived about three minutes later. Korniyenko’s knee and elbow were scraped and he had a one-half-inch-diameter scrape to his forehead above his left eye from being struck with a paint can.

II.

Pursuit and Apprehension

At about 4:30 p.m. on April 25, 2008, Robert Hickson, a security officer at the Hermosa Village housing complex in Anaheim, was on duty and preparing reports in his office. Hearing some banging noise coming from the alley where he had parked his patrol car, Hickson got up from his desk and stepped to the door to see what was going on. He saw three young men, whom he recognized as Turcios, Caceres, and Sotelo, run past the office. When Hickson asked them what they were doing, they stopped running and turned toward him. Turcios said he was going to kill Hickson; Sotelo, while pretending to look down the barrel of a gun, said he was going to come back with a shotgun and “blow [his] fucking head off.” Caceres grabbed Sotelo and, pulling him away, said, “come on. We got to go, we got to go,” then grabbed Turcios and said, “come on, we got to get out of here.” Hickson told them he was going to call the police.

After notifying his security company dispatch by radio, Hickson got into his car and drove off down the alley after Turcios, Caceres, and Sotelo. Hickson made a right turn onto Calle De Las Estrellas, drove westbound, and then made a right turn onto 9th Street, where he spotted them running across the street. Hickson called Police Detective Julissa Trapp and told her what had happened.

Hickson saw Turcios, Caceres, and Sotelo flee through a hole in a fence and run along the shoulder of a flood control channel. Hickson stopped his car. He saw a uniformed police officer who had been dispatched to investigate the crime, drew his attention, and showed him the hole in the fence and the direction in which Turcios, Caceres, and Sotelo had fled. The officer, Derek Trusk, hopped over a fence and proceeded down a dirt path alongside the flood control channel until he saw three men. One of them, Alvarez, was on the dirt path while the other two, Caceres and Sotelo, were in the channel. Trusk ran toward Alvarez, who, upon turning and facing Trusk, dropped two spray paint cans. Alvarez, Caceres, and Sotelo fled—Alvarez on the dirt path, and Caceres and Sotelo in the channel. Trusk commanded them to stop, but none obeyed, so Trusk pursued them. Alvarez ran until he hit a chain-link fence, where he was arrested by another police officer. Caceres and Sotelo continued down the flood control channel.

Meanwhile, Trapp responded to Hickson's call by driving her unmarked patrol car to the flood control channel alongside Hermosa Village. When she arrived at the channel, she saw Caceres and Sotelo walking in her direction at the bottom of the channel. Trapp and backup officers hopped over a fence, followed Caceres and Sotelo, and apprehended them. While being escorted by one of the police officers, following his arrest, Sotelo screamed, "fuck you. This is Jeffrey Street"; "[f]uck you, Jeffrey Street homes"; and "fuck you all. This is Jeffrey Street."

After Alvarez, Caceres, and Sotelo were arrested, Trusk and two other police officers lifted a manhole cover and entered a storm drain in pursuit of Turcios. The officers walked several hundred yards through the dark, watery storm drain until they

came upon Turcios, who had been hiding, and arrested him. Trusk later searched the area and found a handgun inside of a knit glove “under some moss where there was some dirt and debris.”

Trusk and the other officers examined the handgun when they returned to the police station parking lot. They used needle-nose pliers to remove the cylinder pin and found an unspent cartridge in each of the cylinder’s five chambers.

III.

Prosecution Firearm Expert Testimony

Officer Angelo Rosselli, the Anaheim Police Department’s senior weapons instructor, later determined the handgun found by Trusk was a .32-caliber revolver manufactured by a company called Clerke. When Rosselli examined the gun, it was “dry and dirty” and the cylinder rod, on which the cylinder spins, was bent. Rosselli described the gun as “never a really good quality firearm to begin with on its best day.”

Based on the presence of gunshot residue on the front of the cylinder, Rosselli determined the gun had been fired at some point in time. The gun was unusual, Rosselli explained, because it did not have a firing pin block, without which the gun could be fired without pulling the trigger. Rosselli did not know whether the manufacturer did not include a firing pin block or if it had been removed from the gun.

Rosselli examined the five unfired cartridges found in the gun’s cylinder and noticed each one had strike marks on the base and around the primer. He concluded the strike marks appeared to have been made by the gun’s firing pin, which was off-center.

Rosselli noticed the gun’s cylinder rod was bent toward the center. When he received the gun, the cylinder rod had been removed. He was able to reinsert the rod, though with difficulty, by turning the cylinder on the rod so he could insert the rod into the gun frame. Rosselli’s visual inspection led him to conclude the gun had timing

issues, that is, the cylinder would overrotate so the firing pin would not strike the center of the primer.

Rosselli test-fired the gun using primered cartridges—similar to blanks—with both double action and single action. Double action means pulling the trigger both cocks the hammer and releases it, and single action means pulling the trigger only releases the hammer, which must be cocked by hand. Rosselli initially tried firing the gun using double action. He pulled the trigger many times, and each time the gun did not fire. At that point, he changed the way he pulled the trigger and was able to fire the gun with double action. He noticed that if he slowly pulled the trigger with double action, the cylinder rotated to the correct position and he was able to fire the gun. Rosselli then used single action, and was able to fire the gun four out of four times. He noticed that when using single action, the cylinder “seemed to be coming up pretty straight every time.” Rosselli concluded the gun was “an unreliable firearm.”

IV.

Gang Expert Testimony

Trapp testified as a gang expert on the prosecution’s behalf. Jeffrey Street was one of the gangs assigned to her while she worked in the gang unit of the Anaheim Police Department.

Trapp explained that “respect” is very important to gang members and is earned primarily through acts of violence. She testified: “Violence is the driving force in the gang subculture. It is the number one way to earn respect. It is the number one way to settle acts of disrespect.” It was possible for nongang members to commit acts of disrespect, as Trapp testified, “[i]t could be a citizen in the community who has chosen to challenge an individual.”

Trapp testified the commission of certain crimes by gang members benefits their gang. Such crimes include assaulting a rival gang member, attempted murder, murder of a rival gang member, drug sales, and robbery. Commission of certain crimes

against nongang members might also benefit the gang. She explained: “If, say, for example, . . . an incident that a particular gang was disrespected and they retaliated against that individual because they felt disrespected, then they are, one, continuing to increase their reputation, but also increasing the intimidation on that community. And by intimidating the community, the community is less likely to call the police station, report crimes, testify against gang members, or cooperate with police.”

Trapp testified Jeffrey Street is a traditional Hispanic street gang in the City of Anaheim. The Jeffrey Street gang claims a territory bounded by Walnut Street on the east, Katella Avenue on the south, Euclid Street to the west, and Ball Road to the north. Jeffrey Street’s primary activities included aggravated assault, robbery, and felony vandalism.

In April 2008, Jeffrey Street had about 100 members. Its common initials are “JST” and “CJ” for “Calle Jeffrey.” The graffiti painted on Korniyenko’s truck was “JST” and “X3” and was consistent with other Jeffrey Street graffiti Trapp had seen in the past.

Trapp concluded Sotelo, Alvarez, and Turcios were active participants of the Jeffrey Street gang as of April 25, 2008. Alvarez had told Trapp that he started “gang banging” with Jeffrey Street at age 15. He had gang-related tattoos on his body and had the gang monikers “Termite” and “Youngster.” On 15 prior separate occasions, Turcios had admitted he was a member of Jeffrey Street. He had told Trapp he was “jumped into” the gang at age 13. His moniker was “Pato,” the Spanish word for duck. A cell phone belonging to Caceres was searched and stored in it were photographs of Sotelo, including one in which he was throwing a Jeffrey Street hand sign.

DISCUSSION

I.

Substantial Evidence Supported the Convictions for Attempted Voluntary Manslaughter.

Sotelo, Turcios, and Alvarez contend substantial evidence did not support the jury verdicts convicting them of attempted voluntary manslaughter. Sotelo argues he lacked the requisite intent to kill Korniyenko because the “undisputed facts” established that the handgun was “non-operational” on April 25, 2008 and that he knew so when he pulled the trigger. For the same reason, Turcios and Alvarez argue they could not be found guilty under an aiding and abetting theory.

Manslaughter is statutorily defined as “the unlawful killing of a human being without malice.” (§ 192.) Voluntary manslaughter is (1) the killing of a human being upon a sudden quarrel or heat of passion; (2) when the defendant kills in unreasonable self-defense; or (3) when the defendant, acting with conscious disregard for and with the knowledge the conduct is life-threatening, unlawfully kills while having an unreasonable but good faith belief in the need to act in self-defense. (*People v. Blakeley* (2000) 23 Cal.4th 82, 87-88.) “Voluntary manslaughter is a lesser included offense of murder when the requisite mental element of malice is negated by a sudden quarrel or heat of passion, or by an unreasonable but good faith belief in the necessity of self-defense.” (*People v. Gutierrez* (2003) 112 Cal.App.4th 704, 708.)

An attempt to commit a crime requires a specific intent to commit the crime. (§ 21a.) At least one Court of Appeal has held that the crime of attempted voluntary manslaughter requires a specific intent to kill a human being. (*People v. Montes* (2003) 112 Cal.App.4th 1543, 1549-1550.) The jury in this case was instructed that an element of attempted voluntary manslaughter was “the defendant intended to kill that person.” (See CALCRIM No. 603.)

Sotelo, Turcios, and Alvarez contend the evidence established they could not have intended to kill Korniyenko because the gun was “non-operational” when Sotelo tried to shoot it on April 25, 2008, and Sotelo testified he knew at that time the gun could not fire. This argument ignores or misconstrues Rosselli’s testimony. Rosselli testified he was always able to fire the gun in single action and was able to fire it in double action if he pulled the trigger slowly. Rosselli did not testify the gun was nonoperational: He testified the gun was “*unreliable*.” (Italics added.) As Rosselli demonstrated, an unreliable gun can fire.

Patricia Fant, the defense firearms expert, testified she examined the gun and concluded it was “out of timing”—that is, the rounds were not properly aligned with the firing pin and the barrel and, as a result, a cartridge would not discharge. Fant did not test-fire the gun because she could not get the base into the cylinder without potentially changing the condition of the gun from the way she received it.

In reviewing the sufficiency of the evidence, we determine whether the evidence supporting the judgment is “reasonable, credible, and of solid value.” (*People v. Abilez* (2007) 41 Cal.4th 472, 504.) Whatever the strength of Fant’s testimony, Rosselli’s testimony was reasonable, credible, and of solid value, and amply supported a finding the gun was capable of firing—and killing—on April 25, 2008.

Sotelo, the only defendant to testify at trial, testified that he knew the gun would not fire and that Alvarez had said, “[i]t doesn’t work.” Sotelo testified he had pointed the gun at Korniyenko and pulled the trigger only to make him run away. Sotelo’s testimony was contradicted by evidence Sotelo pulled the trigger for the third time after Korniyenko started running toward his home. Moreover, “it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]”

(*People v. Maury* (2003) 30 Cal.4th 342, 403.) The jury, as the ultimate judge of credibility, could disbelieve Sotelo, and apparently did so.

II.

Substantial Evidence Supported the True Finding on the Gang Enhancement Allegations.

Trapp, as the prosecution's gang expert, testified generally about street gang culture and how the commission of certain crimes benefits the gang. She testified specifically that Jeffrey Street is a traditional Hispanic street gang and that as of April 25, 2008, Sotelo, Turcios, and Alvarez were active participants in it. Trapp testified to all those things a prosecution gang expert typically testifies to, except for one thing: She did not testify whether the crimes committed in this case were for the benefit of or in association with a criminal street gang. The prosecutor did not present her with the standard "hypothetical" based on the facts of the case and did not ask her whether the perpetrators in the hypothetical committed the crimes for the benefit of or in association with a criminal street gang. For that reason, Sotelo, Turcios, and Alvarez argue the evidence is insufficient to support the jury's true findings on the gang enhancement allegations under section 186.22(b)(1).

Section 186.22(b)(1) states, in relevant part: "[A]ny person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished"

The enhancement under section 186.22(b)(1) has two prongs. The first prong is the defendant's conviction "of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang" (§ 186.22(b)(1)); that is, the crime was gang related (*People v. Albillar* (2010) 51 Cal.4th 47, 59-60). The jury

instruction in this case limited the first prong to “for the benefit of” or “in association with” a gang and omitted “at the direction of.” The second prong is the defendant committed the crime “with the specific intent to promote, further, or assist in any criminal conduct by gang members.” (§ 186.22(b)(1).) The enhancement requires “only the specific intent to promote, further, or assist criminal conduct by *gang members*.” (*People v. Albillar, supra*, at p. 67.) The second prong is not in issue in these appeals.

In *People v. Vang* (2011) 52 Cal.4th 1038, 1041, 1044, the California Supreme Court held a gang expert may respond to hypothetical questions asking whether the charged crime was gang related so long as the hypothetical questions were based on the evidence. The court rejected the defense argument the trial court erred in permitting the expert to respond to hypothetical questions because the questions tracked the evidence in a “thinly disguised” manner. (*Id.* at p. 1041.)

This case presents the opposite question: *Must* the gang expert opine, in response to hypothetical questions based on the evidence, that the charged crime was gang related in order for the jury to find true the gang enhancement allegations under section 186.22(b)(1)? Or, phrased another way, is gang expert testimony the charged crime was gang related necessary to affirm the jury’s true finding on the gang enhancement allegations?

“‘California law permits a person with “special knowledge, skill, experience, training, or education” in a particular field to qualify as an expert witness (Evid. Code, § 720) and to give testimony in the form of an opinion (*id.*, § 801).’” (*People v. Vang, supra*, 52 Cal.4th at p. 1044.) Under Evidence Code section 801, expert opinion testimony is admissible only if the opinion is “[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would *assist* the trier of fact.” (Evid. Code, § 801, subd. (a), italics added.)

The word “assist” is critical to understanding the function of expert opinion testimony. Since expert opinion testimony must assist the trier of fact, it is not permitted

on subjects for which the trier of fact needs no assistance. For example, expert testimony is not permitted “when ‘the subject of inquiry is one of such common knowledge that [persons] of ordinary education could reach a conclusion as intelligently as the witness.’” (*People v. McDonald* (1984) 37 Cal.3d 351, 367, overruled on another ground in *People v. Mendoza* (2000) 23 Cal.4th 896, 914; see also *People v. McDowell* (2012) 54 Cal.4th 395, 429 [“the trial court did not abuse its discretion in determining that the essence of the proffered expert opinion testimony, namely, that ‘if you have a bad childhood, it can affect you as an adult,’ did not require expert opinion testimony”]; *People v. Prince* (2007) 40 Cal.4th 1179, 1227 [“[A]n expert’s opinion that a defendant is guilty is both unhelpful to the jury—which is equally equipped to reach that conclusion—and too helpful, in that the testimony may give the jury the impression that the issue has been decided and need not be the subject of deliberation”].)

Since the purpose of expert opinion testimony is to assist—not supplant—the trier of fact, it is required only in limited situations when “the matter in issue is one within the knowledge of experts *only* and not within the common knowledge of laymen.” (*Miller v. Los Angeles County Flood Control Dist.* (1973) 8 Cal.3d 689, 702.) For example, expert opinion testimony is required when the issue of causation involves complex, scientific matters that are beyond common experience (e.g., *Stephen v. Ford Motor Co.* (2005) 134 Cal.App.4th 1363, 1373 [causation in product liability case based on design defect in tire]; *Jones v. Ortho Pharmaceutical Corp.* (1985) 163 Cal.App.3d 396, 403 [cause of cancer is beyond common experience]) and “in every professional negligence case to establish the applicable standard of care, whether that standard was met or breached by the defendant, and whether any negligence by the defendant caused the plaintiff’s damages” (*Scott v. Rayhrer* (2010) 185 Cal.App.4th 1535, 1542).

In summary, ““[t]he rationale for admitting opinion testimony is that it will assist the jury in reaching a conclusion called for by the case. ‘Where the jury is just as competent as the expert to consider and weigh the evidence and draw the necessary

conclusions, then the need for expert testimony evaporates.’ [Citation.]” [Citations.] In other words, when an expert’s opinion amounts to nothing more than an expression of his or her belief on how a case should be decided, it does not *aid* the jurors, it *supplants* them.”” (*People v. Vang, supra*, 52 Cal.4th at p. 1054 (conc. opn. of Werdegarr, J.).)

The ultimate issue called for by the first prong of the enhancement under section 186.22(b)(1) is whether the charged crime was gang related. (*People v. Albillar, supra*, 51 Cal.4th at pp. 59-60.) In light of the evidence at trial, was the resolution of this issue beyond the jurors’ common experience such that expert opinion testimony was required?

No. The jury could consider and weigh the evidence at trial, including Trapp’s testimony, and, based on its common experience, draw the conclusion that Sotelo, Turcios, and Alvarez committed the crimes for which they were convicted for the benefit of or in association with the Jeffrey Street gang. The evidence established that Jeffrey Street was a Hispanic street gang, the claimed territory of which included the crime scene, and that Sotelo, Turcios, and Alvarez were active participants of the gang. Trapp testified Jeffrey Street’s primary activities included aggravated assault, robbery, and felony vandalism. She testified the commission of certain crimes by gang members, including assault, attempted murder, murder of a rival gang member, drug sales, and robbery, benefitted the gang by enhancing its reputation for violence and by intimidating the community. She testified an act of perceived disrespect by a rival gang member or even by “a citizen in the community” could prompt a violent response from gang members.

When Korniyenko saw Alvarez sitting on his truck and drinking beer, he asked Alvarez to drink his beer elsewhere. Soon thereafter, Alvarez and his fellow gangsters, Sotelo, Turcios, and Caceres, together went to Korniyenko’s home, where Alvarez proceeded to paint graffiti on the windshield of Korniyenko’s truck. When Korniyenko asked Alvarez to stop, all four attacked Korniyenko, and Sotelo tried to shoot

him. They did so in broad daylight, in front of Korniyenko's family and neighbors. Following his arrest, Sotelo screamed, "fuck you. This is Jeffrey Street"; "[f]uck you, Jeffrey Street homes"; and "fuck you all. This is Jeffrey Street."

The issue whether the crimes were gang related did not involve complex science or determination of a professional standard of care. A person with common knowledge could conclude from the evidence that Sotelo, Turcios, and Alvarez committed the crimes to benefit the Jeffrey Street gang by retaliating against Korniyenko for asking Alvarez to get off his truck, enhancing Jeffrey Street's reputation for violence, and intimidating the neighborhood. From the evidence that four active participants of Jeffrey Street acted together, the jury could infer, without expert assistance, that the crimes were committed in association with a criminal street gang and with the specific intent to promote, further, or assist in any criminal conduct by gang members. (*People v. Williams* (2009) 170 Cal.App.4th 587, 625; *People v. Villalobos* (2006) 145 Cal.App.4th 310, 322; *People v. Morales* (2003) 112 Cal.App.4th 1176, 1198.) Expert opinion testimony, though permissible, was unnecessary on this record to connect the dots laid out by the evidence.

DISPOSITION

Each of the judgments is affirmed.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.